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# THE INITIATIVE, REFERENDUM AND RECALL IN SWITZERLAND

BY WILLIAM E. RAPPARD,  
Of Geneva, Switzerland,  
Instructor in Economics at Harvard University.

## I. WHY SWISS DEMOCRACY SHOULD INTEREST AMERICANS

There are two compelling reasons which make the Swiss experiment in direct democracy well worth considering in the United States.

### 1. *The United States and Switzerland: A Parallel*

In the first place, political analogies although often deceptive, are always interesting and may sometimes be helpful. The closer they are, the less deceptive and the more suggestive they must prove to be.

Now the contrasts are no doubt many and striking between the young, colossal, and ever-expanding republic, founded on the shores of a new continent at the close of the eighteenth century, and the ancient and minute Helvetic commonwealth, situated in the heart of Western Europe, whose legendary origins lie hidden in the darkness of the Middle Ages. But between the two countries of to-day, there are relations and resemblances also, which, though they may escape the glance of the superficial observer, should not be overlooked by the careful student of comparative politics.

Both are federal republics in which the so-called principle of "double sovereignty," local and national, has given rise to the same legal problems and to the same political difficulties. The Swiss constitution of 1848, of which the present fundamental law of 1874 is the natural outgrowth, was a conscious imitation of the American constitution of 1789.<sup>1</sup> Both countries are democracies. This is

<sup>1</sup> This is denied by Rüttimann in his work entitled *Das nordamerikanische Bundesstaatsrecht verglichen mit den politischen Einrichtungen der Schweiz*, 3 vols., Zurich, 1867-1876, vol. I, p. 25. But the constitutional debates, as well as the whole Swiss political literature of the first half of the nineteenth century, conclusively show that he is mistaken. See for instance the characteristic quotations in Th. Curti's *Die schweizerischen Volksrechte 1848 bis 1900*, Bern 1900, pp. 1-12; Hilty, "Das Referendum im schweizerischen Staatsrecht," *Archiv für öffentliches Recht*, 1887, p. 207; W. D. McCrackan, "The Swiss and American Constitutions," *Arena*, vol. IV, July, 1891, p. 173; A. V. Dicey, "The United States and the Swiss Confederation," *The Nation*, October, 1885, vol. XLI, p. 297. Cf. also the introduction to my article on the "Initiative and the Referendum in Switzerland," in the August, 1912, number of the *American Political Science Review*.

indisputably true of Switzerland. It is still sometimes questioned of the United States. Without entering upon a discussion on this point, we would ask those who are inclined to deny it, what term could more adequately define the political *régime* of a nation, whose citizens are so unanimously convinced that they are living under a government of the people, for the people, and by the people? That formula of democracy so perfectly expresses the prevailing sentiment, that all positive institutions which conflict with it, have become anachronistic and are therefore doomed. In the actual workings of party government there are certainly many contrasts between the two republics, but that the political machine is not an American monopoly, will be clearly recognized the day some acute observer renders Switzerland the great public service for which the United States is so grateful to Mr. James Bryce.

Economically, it is true, there are no apparent resemblances between ocean-bounded, wheat-growing, and mining America, and pastoral Switzerland, with its poverty in mineral wealth and its lack of seaports. But when Mr. Bradford, discussing the possible application of Swiss methods of popular government to America, warns his readers against fallacious analogies on the ground that Switzerland "has no very large manufactures or large cities and no great extremes of wealth and poverty," he is certainly mistaken.<sup>2</sup> The cotton-spinning and weaving trades, the silk, embroidery, watchmaking and chemical industries of Zurich, Basle, St. Gall, Neuchatel and Geneva are, in proportion to the size of the communities in which they prosper, quite comparable to the largest manufactures in the United States. They are organized on a highly capitalistic basis and have therefore given rise to an industrial proletariat on the one hand and to great fortunes on the other. On the whole, no doubt, wealth is more evenly distributed in Switzerland than in Great Britain or Germany, but cannot the same be claimed for the United States? New York, it is true, is more than twenty-five times as large as Zurich, the largest city in Switzerland, but there is relatively a more numerous urban population in Switzerland than in the United States. The number of cities whose population exceeds 65,000 is sixty-five in the United States, and five in Switzerland, a proportion of 13 to 1. But the total population of the United States is to that of Switzerland about as 25 is to 1. It is important to notice

<sup>2</sup> G. Bradford, *The Lesson of Popular Government*, 2 vols., New York, 1899, vol. II, p. 231.

that the distribution of population according to occupations is not essentially different in the two countries. In 1905, of the 1,818,217 Swiss, who could be classed as immediate producers, 43 per cent were engaged in agriculture, 40 per cent in manufacturing and mechanical pursuits, and 17 per cent in trade and transportation. The corresponding figures for the United States, according to the census of 1900, were 41 per cent, 39 per cent, and 20 per cent.<sup>3</sup>

Socially again the parallelism is striking. In both countries the middle-class agricultural element, though numerically weaker than all the other classes combined, is still represented by a strong and prosperous body of land-owning farmers, whose influence is always potent and often decisive in national affairs. In both countries Protestantism is the prevailing creed, but in both there is an important Catholic minority. In point of general education and public enlightenment Switzerland occupies in continental Europe a situation similar to that of the United States in America.<sup>4</sup> Thanks to the constantly growing influx of foreigners of German, French,

<sup>3</sup> Absolute accuracy cannot, of course, be claimed for these figures. They are based on official Swiss and American data, combined in such a way as to make a comparison possible. Miners and quarrymen, for instance, who, in Swiss statistics, are classified with the farmers, as being likewise engaged in *Gewinnung der Naturerzeugnisse*, have been transferred to the second category. On the other hand, hotel-keepers and the like, who, according to the American census, are engaged in domestic and personal service, have been counted with tradespeople. Cf. *Statistisches Jahrbuch der Schweiz*, Jahrgang, 1907. *Ergebnisse der eidg. Betriebszählung von 1905*, and *Statistical Abstract of the United States for 1911*.

<sup>4</sup> Obviously this statement cannot be scientifically substantiated. Perhaps the most significant tangible symptom of wealth and education, the two essential conditions of advanced civilization, is the comparative amount of written matter annually forwarded by mail. The following table may therefore be pertinently cited in this connection:

Countries.	Population in 1908.	Total number of letters and cards forwarded in 1908.	Number of letters and cards forwarded per head of population.
United States.....	91,030,000	7,947,000,000	87.3
Switzerland.....	3,585,000	252,000,000	70.1
Germany.....	64,926,000	4,041,000,000	63.1
Austria.....	30,463,000	1,095,000,000	36.5
France.....	39,602,000	1,320,000,000	33.9
Italy.....	34,687,000	376,000,000	11.0

—See *United States Statistical Abstract*, 1910.

Although such general data must be interpreted with extreme caution, statistics seem to show that, with regard to the amount of money spent per scholar for educational purposes, no government in Europe more nearly approaches the United States than Switzerland. See A. D. Wells, *The New Dictionary of Statistics*, London, 1911, p. 209.

and Italian origin, Switzerland is confronted with an immigration problem which, in many of its aspects, is even more perplexing than that which at present faces American statesmen. Switzerland, it is true, has never been seriously troubled with a race question, but that in the Helvetic, as well as in the American republic, national unity has no ethnological basis is clearly shown by the varieties of languages spoken by the Swiss people.<sup>5</sup> It would be a most interesting task to show that Switzerland owes no less to the religious intolerance of other nations than does the United States, but this would lead us too far away from our main subject. We may say, however, in concluding this comparative political, economic and social sketch, that the historical influence of the Huguenot element in Switzerland, can well be compared to that exerted by the Puritans and the other religious refugees on American prosperity and on American institutions.

"But," I hear an impatient reader exclaim in patriotic protest, "why all these laboriously established analogies? What can the hundred millions of United States citizens learn from the example of a nation smaller, in population, than New York City?" My answer is simple. The modern devices of direct democracy which we are about to discuss, obtain in the federal government in Switzerland, whereas, to begin with at least, it is not proposed to apply them to the federal government in America. Now, small as she may appear, Switzerland is larger than all American cities but one, and larger also than many American States.<sup>6</sup>

<sup>5</sup> On December 1, 1910, Switzerland had a population of 3,741,971. Its distribution according to creed, tongue and nationality is shown in the following table:

CREED.		Percentage
Protestants.....	2,108,590	57.1
Catholics.....	1,590,792	42.9
NATIONALITY.		
Swiss.....	3,176,675	85
Foreign.....	565,296	15
PREVAILING LANGUAGES.		
German.....	2,599,154	70.3
French.....	796,244	21.6
Italian.....	301,325	8.1

—*Statistisches Jahrbuch der Schweiz*, Jahrgang, 1910.

<sup>6</sup> Switzerland, with a population of 3,741,971, an area of 15,976 square miles, and consequently an average density of 234.2 inhabitants per square mile, were it an American state, would rank forty-first in point of area, between West Virginia (24,170 square miles) and Maryland (12,327), sixth in point of population, between Texas (3,896,542) and Massachusetts (3,366,412), and fourth in point of density of population, between New Jersey (337.7 inhabitants per square mile) and Connecticut (231.3 inhabitants per square mile).

Objections based on considerations of relative size and importance cannot therefore be justly urged against us. Besides, even if these objections were theoretically justified, they would be practically irrelevant, as the actual influence of Swiss direct democracy on American institutions cannot be denied. It is futile to argue that the United States can learn nothing from the Swiss example, when it may be proved that in point of fact they have admittedly learned a great deal.

## 2. *The Recent Adoption of Swiss Methods in the United States: A Case of Democratic Contagion*

This leads us to state the second compelling reason why intelligent citizens of this country should be peculiarly interested in our subject. Not only may the Swiss experiment be of assistance to him who would help solve the problems of the immediate American future, but it cannot be overlooked by him who would fully understand the development of the recent American past. This case of democratic contagion, although recognized by several,<sup>7</sup> has never been clearly diagnosed and fully stated. I may therefore be excused if I dwell upon it here in some detail.

One of the most marked features of the political evolution of the United States in the course of the nineteenth century is an ever-growing popular dissatisfaction with the state legislatures and a consequent constitutional limitation of their powers.

Professor Burgess had clearly established the fact in 1886.<sup>8</sup> Soon after it was generally recognized among publicists<sup>9</sup> and in 1898 Mr. Edwin L. Godkin devoted a whole chapter of his "Unforeseen Tendencies of Democracy" to the discussion of "The decline of legislatures."<sup>10</sup>

The people had long distrusted their elected representatives, but towards the close of the century, owing to a variety of definite circumstances, they were roused to a sense of violent and impatient protest against their domination.<sup>11</sup>

<sup>7</sup> For instance by President Lowell in his recent article in the *Quarterly Review*, vol. CCXIV, April, 1911, p. 525.

<sup>8</sup> In his article on the "American Commonwealth," *Pol. Sci. Quarterly*, vol. I, pp. 26-30.

<sup>9</sup> See for instance the *Spectator*, vol. LXXI, p. 904; E. V. Raynolds, *Yale Review*, vol. IV, p. 289.

<sup>10</sup> Boston, 1898, Chapter IV, pp. 96-145.

<sup>11</sup> An undoubtedly exaggerated but still a significant expression of this feeling may be found in the campaign book of the People's Party published in 1892 by the Hon. Thomas E. Watson, Member of Congress from Georgia, under the title, *Not a Revolt; It is a Revolution*, Washington, 1892.

In Mr. James Bryce's celebrated work on the American Commonwealth, whose first edition appeared at the close of the year 1888, American institutions were subjected to an analysis more searching in its method and more comprehensive in its scope than had ever been attempted before. The evils of corrupt bossism and of political feudalism which that remarkable work revealed, were all the more startling to American pride, since their foreign critic was so evidently fair and so eminently sympathetic in his general judgments. "It has become somewhat of a common place assertion that our politics have reached the lowest stage to which they may safely go," wrote Mr. W. D. McCrackan in 1893.<sup>12</sup> He added, "The general conviction has gone abroad, amply justified by the whole course of history, that no democracy can hope to withstand the corrupting influences, now at work in our midst, unless certain radical reforms are carried to a successful conclusion."

At about the same time the attention of the English speaking public was almost suddenly called to the Swiss experiment in direct democracy. In 1890 the anonymous author of an article in the *Edinburgh Review* declared that Switzerland was "to Englishmen the best explored and the least known state of modern Europe."<sup>13</sup> The referendum seemed absolutely strange to the Anglo-American world at large. Such works as Ripley and Dana's *American Cyclopædia* (1875) and Lalor's *Cyclopædia of Political Science* (1882-1884) contained no articles on the subject. According to Murray's *New Historical Dictionary* the term was first used in the English press in 1882 in relation to Swiss affairs. Two articles describing the Swiss referendum were published in *The Spectator* in 1884. They bore the following titles, "The popular veto in Switzerland" and the "Swiss right of censure."<sup>14</sup> In 1890, the author of the above-mentioned article in the *Edinburgh Review*, defining the referendum, declared it to be "a term utterly foreign to English constitutionalism."<sup>15</sup> Writing in 1894, Professor Dicey relates that "the nature and the very name of the referendum were then (1890) unknown to Eng-

<sup>12</sup> *Save the Republic*, No. 3, Present Day Problems, Boston, 1893, p. 1.

<sup>13</sup> Art. "Democracy in Switzerland," *Edin. Rev.*, vol. CLXXI, Jan., 1890, p. 113. Cf. A. W. Hutton, "Switzerland as a School of Politics," *Living Age*, vol. CLXXXVIII, Jan., 1891, p. 150: "Switzerland is the best known and the least known of all the countries of Europe. Its physical features are familiar to every one; its system of government only to a few." See also E. A. Freeman, "The Referendum," *Universal Rev.*, vol. VII, May-August, 1890, p. 331.

<sup>14</sup> Vol. LVI, p. 1340, and vol. LVII, p. 672.

<sup>15</sup> *Loc. cit.*, p. 135.

lish statesmen."<sup>16</sup> This was not a result of mere insularism, as is shown by a similar statement made by Mr. McCrackan with regard to the United States for the year 1888.<sup>17</sup> Five years later, in England as well as in this country, the term had become familiar to every one and the desirability of the adoption of the institution was widely discussed. In 1894 Professor Dicey comments on "the vast change" which had taken place in this respect in England;<sup>18</sup> and in 1896 Mr. W. E. H. Lecky speaks of the Swiss referendum as of the "great possible constitutional change, very new to English opinion, which has risen with remarkable rapidity into prominence in the last few years."<sup>19</sup> In America, Mr. McCrackan, in 1893, notes the "truly astonishing rapidity with which this question of the referendum has forced itself into public notice,"<sup>20</sup> and in 1896 Mr. Eltweed Pomeroy writes that "the word referendum is constantly in the daily papers, so that the reader must be far behind the times who is not familiar with the term."<sup>21</sup> What had happened in the course of this short period, so momentous for the history of our subject?

A series of articles and books had been published in English on Swiss history and on Swiss institutions. The referendum had been discovered and its possibilities as an effective defense against unpopular legislation had been made clear. Corruption in the United States and the Irish Home Rule policy in Great Britain, which a parliamentary majority seemed inclined to impose on an unwilling people, had, in both countries, indisposed the electorate towards their representatives. Democracy was ill. A new cure was proposed. The eagerness with which the American and English publicists seized upon the imported Swiss remedy reminds one of the feverishly hopeful expectancy with which an invalid welcomes a novel foreign drug.

Before 1889 the English speaking public had had occasion to hear of the referendum only through a few scattered magazine articles and newspaper correspondences. In 1885, it is true, Sir Henry Sum-

<sup>16</sup> *National Rev.*, vol. XXIII, March, 1894, p. 65.

<sup>17</sup> In an article on the "Swiss Referendum" published in the *Cosmopolitan*, vol. XV, July, 1893, p. 333: "Five years ago its very name was unknown in this country."

<sup>18</sup> *Loc. cit.* *National Rev.*

<sup>19</sup> *Democracy and Liberty*, 2 vols., 1st ed., London, 1896, vol. I, p. 277.

<sup>20</sup> *Loc. cit.* *Cosmopolitan*.

<sup>21</sup> *Arena*, vol. XVI, p. 42. See also F. Parsons, *The City for the People*, Philadelphia, 1900, p. 287: "With the single exception of the public ownership of monopolies, no other progressive idea has had anything like so rapid a growth as this" (direct legislation).



ner Maine had given the subject some attention in his "Essays on Popular Government."<sup>22</sup> But discussing the referendum, as he did, mainly to show its negative effects and thereby to dissipate the "gross delusions" of that "particular political school" which believed that "Democracy was a progressive form of government," he evidently did not commend it to the radical elements of the community, who could alone be expected to favor its adoption. In 1885 and 1886, Professor Dicey, holding that "the problem of the age is how to form conservative democracies,"<sup>23</sup> and observing the conservative tendencies of the Swiss referendum, urged that this new device be carefully considered in America, and predicted that "for good or bad, it is likely to come into existence in every thoroughly democratic state."<sup>24</sup> But both his advice and his prophecy seem to have escaped general notice. In 1888 the question was again ventilated in an interesting article in the *Westminster Review*<sup>25</sup> and in several pages of Mr. Bryce's "American Commonwealth;" but it was only in the following year that public discussion was fairly started by the publication of Sir Francis Ottiwell Adams and Mr. C. D. Cunningham's comprehensive book on "The Swiss Confederation."<sup>26</sup> It was a work neither original in its conception nor profound in its analysis, but it combined the merits of clearness and general accuracy,<sup>27</sup> with the great advantage of timeliness and novelty to the English reader. The volume was favorably reviewed in many periodicals<sup>28</sup> and extensively used and quoted by the hundreds of Anglo-American authors who, in the course of the last twenty years, have discussed Swiss institutions in books, pamphlets, magazines, and newspapers.<sup>29</sup> At the other pole of the Anglo-Saxon world Professor B. Moses, within the same year, published his treatise on the "Federal government of Switzerland,"<sup>30</sup> a useful book but less entertainingly written

<sup>22</sup> London, 1885, p. 97.

<sup>23</sup> "Democracy in Switzerland II," *Nation*, vol. XLIII, December, 1886, p. 944.

<sup>24</sup> The "United States and the Swiss Confederation," *Nation*, vol. XLI, Oct., 1885, p. 298.

<sup>25</sup> Vol. 129, February, pp. 204-213, reprinted in the *Living Age*, vol. LXXXVII, March, pp. 643-648.

<sup>26</sup> London, 1889.

<sup>27</sup> Adams, its principal author, was British minister in Berne at the time.

<sup>28</sup> See for instance the *Spectator*, vol. LXII, May, 1889, pp. 650-651; *Athenaeum*, vol. II, July, 1889, pp. 59-60; *Edin. Rev.*, vol. CLXXI, Jan., 1890, pp. 113-150.

<sup>29</sup> In the preface to the first edition of his *Referendum in America*, Mr. E. P. Oberholtzer declares that "this book started discussion in this country." 2d ed., New York, 1912, p. iii. Some familiarity with the contemporary literature of the subject enables me fully to confirm this statement.

<sup>30</sup> Oakland, Cal., 1889.

than the former, and evidently not intended for a wide popular circulation. From 1890 until 1898, when the first American state adopted the initiative and the referendum of the Swiss type, Switzerland, and particularly its experiments in direct democracy, were subjects of ever increasing interest in England and America. The following list of chronologically arranged publications may serve both as an indisputable proof of this interest and as a very incomplete English bibliography of our subject:

1883. Anon., "The popular veto in Switzerland," *Spectator*, vol. LVI, Oct., pp. 1340-1341.
1884. Anon., "The Swiss vote of censure," *Spectator*, vol. LVII, May, pp. 672-673.
1885. H. S. Maine, *Popular Government. Four Essays*. London.  
E. de Laveleye, "The recent progress of democracy in Switzerland," *Nineteenth Century Rev.* vol. XVIII, Sept., pp. 493-512. Reprinted in the *Living Age*, vol. CLXVII, Oct., pp. 67-79.
- A. V. Dicey, "The United States and the Swiss Confederation," *Nation*, vol. XLI, Oct., pp. 297-298.
1886. A. V. Dicey, "Democracy in Switzerland," *Nation*, vol. XLIII, Nov., pp. 410-412; Dec., pp. 494-496.
1888. J. Bryce, *The American Commonwealth*, London and New York.  
Anon., "The Swiss Constitution," *Westminster Rev.*, vol. CXXIX, Feb., pp. 204-213. Reprinted in the *Living Age*, vol. CLXXVI, March, pp. 643-648.
1889. F. O. Adams and C. D. Cunningham, *The Swiss Confederation*, London.  
B. Moses, *The Federal Government of Switzerland*, Oakland.  
Anon., "The Swiss Confederation," *Spectator*, vol. LXII, May, pp. 650-651.  
Anon., "The Weight of Mass Vote," *Spectator*, vol. LXIII, Oct., pp. 425-426.  
Anon., "The Swiss Confederation," *Athenæum*, vol. II, July, pp. 59-60.
1890. E. J. James, translator, *The Federal Constitution of Switzerland*, Philadelphia.  
Anon., "The Government of Switzerland," *Atlantic Monthly*, vol. LXV, Jan., pp. 128-132.  
Anon., "Democracy in Switzerland," *Edin. Rev.*, vol. CLXXI, Jan., pp. 113-145.  
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E. A. Freeman, "The Referendum," *Universal Rev.*, vol. VII, May-Aug., pp. 331-349.

1891. J. M. Vincent, *State and Federal Government in Switzerland*, Baltimore.  
B. Winchester, *The Swiss Republic*, Philadelphia.  
J. W. Sullivan, "The Referendum in Switzerland," *Chautauquan*, vol. XIII, April, pp. 29-34.  
W. D. McCrackan, "The Swiss Referendum," *Arena*, vol. IV, March, pp. 458-465.  
*Ibid.*, "The Swiss and American Constitutions," *Arena*, vol. IV, July, pp. 172-180.  
W. A. B. Coolidge, "The Early History of the Referendum," *English Hist. Rev.*, vol. VI, Oct., pp. 674-685.  
A. W. Hutton, "Switzerland as a School of Politics," *Living Age*, vol. CLXXXVIII, Jan., pp. 150-159.  
E. P. Oberholtzer, "Law making by popular Vote; or the American Referendum," *Annals of the American Academy of Political and Social Science*, vol. II, Nov., pp. 324-344.  
J. M. Vincent, "Switzerland, 1291-1891," *Nation*, vol. LIII, Aug., pp. 119-120.  
Anon., "The limits of the Referendum," *Spectator*, vol. LXVII, Oct., p. 556.
1892. J. W. Sullivan, *Direct Legislation by the citizenship through the Initiative and the Referendum*, New York.  
W. D. McCrackan, *The Rise of the Swiss Republic*, Boston.  
W. Cree, *Direct Legislation by the people*, Chicago.  
A. V. Dicey, "The Defense of the Union," *Cont. Rev.*, vol. LXI, March, pp. 314-332.  
S. H. M. Byers, "Switzerland's Model Democracy," *Mag. of Am. Hist.*, vol. XXVIII, July, pp. 42-49.  
Anon., "The Swiss Confederation," *Spectator*, vol. LXIX, Aug., pp. 262-263.  
Anon., "The Referendum in America," *Spectator*, vol. LXXI, Dec., pp. 904-905.
1893. A. Cridge, *Proportional Representation, the Initiative and the Referendum*, San Francisco.  
O. King, "Switzerland as a nursery of politics," *Andover Rev.*, vol. XIX, May-June, pp. 269-288.  
W. D. McCrackan, "The Initiative in Switzerland," *Arena*, vol. VII, April, pp. 548-554.  
*Ibid.*, "How to introduce the Initiative and the Referendum," *Arena*, vol. VII, May, pp. 696-702.  
*Ibid.*, "Save the Republic," *Present Day Problems*, No. 3, Boston.  
*Ibid.*, "The Swiss Referendum. The Ideal Republican Government," *Cosmopolitan*, vol. XV, July, pp. 329-333.  
B. O. Flower, Editorial, *Arena*, vol. VIII, July, p. 272.  
C. B. Roylance Kent, "An Appeal to the people," *Macmillan's Mag.*, vol. LXIX, Nov., pp. 15-22.  
G. W. Ross, "Referendum and Plebiscite," *Canadian Mag.*, vol. I, Aug., pp. 445-450.

- S. M. Lindsay, "Recent Constitution Making in Switzerland," *Nation*, vol. LVII, Dec., pp. 425-426.
1894. N. W. Withington, "The Swiss Referendum," *New England Mag.*, vol. IX, Jan., pp. 563-568.
- J. St. Loe Strachey, "An Appeal to the Lords," *National Rev.*, vol. XXII, Feb., pp. 738-742.
- Ibid.*, "The Referendum," *National Rev.*, vol. XXIII, April, pp. 196-200.
- Anon., "Mr. Balfour on the Referendum," *Spectator*, vol. LXXII, Feb., pp. 188-189.
- J. W. Sullivan, "Direct Legislation in Massachusetts," *American Federationist*, vol. I, March, pp. 9, 14.
- Ibid.*, founds the *Direct Legislation Record*, which has since become the *Equity Series* under the management of E. Pomeroy.
- A. B. Hart, "Vox populi in Switzerland," *Nation*, vol. LIX, Sept., pp. 193-194.
- A. L. Lowell, "The Referendum in Switzerland and in America," *Atlantic Monthly*, vol. LXXIII, April, pp. 517-526.
- A. V. Dicey and others, "The Referendum," *National Rev.*, vol. XXIII, March, pp. 65-81.
- W. D. McCrackan, "Swiss solutions of American Problems," *New England Rev.*, vol. XI, Dec., pp. 448-459.
- C. B. Spahr, "Letters on the Referendum," *Outlook*, vol. L, Sept., pp. 423-424.
- Anon., "The Referendum in America," *Spectator*, vol. LXXIII, Oct., pp. 494-495.
1895. C. Borgeaud, *Adoption and Amendment of constitutions in Europe and America*. Translated by C. D. Hazen, New York.
- N. Droz, "The Referendum in Switzerland," *Cont. Rev.*, vol. LXVII, March, pp. 328-344. Reprinted in the *Living Age*, vol. CCV, April, pp. 3-14.
- A. L. Lowell, "The Referendum and the Initiative: Their relation to the interests of labor in Switzerland and America," *International Journal of Ethics*, vol. VI, Oct., pp. 51-63.
- W. D. McCrackan, "The Referendum and the Senate," *Lippincott's Mag.*, vol. LV, June, pp. 855-858.
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- J. M. Gregory, "The Referendum and Initiative in Switzerland," *Public Opinion*, vol. XVIII, April, p. 440.
1896. A. L. Lowell, *Government and Politics in continental Europe*, 2 vols, Boston, vol. II, pp. 238-296.
- J. R. Commons, *Proportional Representation*, New York, pp. 185 *et seq.*
- W. E. H. Lecky, *Democracy and Liberty*, 2 vols, London, vol. I, pp. 277-294.
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- B. S. Dean, "The Constitution or a theory—which?" *Green Bag*, vol. X, Nov., pp. 479-484.

The flood of books and articles published in English on Swiss democracy did not recede after 1898. On the contrary it has con-

tinued to swell so that to-day a discussion of some phase of the referendum seems to be as essential a feature of the typical American magazine as does the inevitable advertisement of a world-famed safety razor which invariably adorns its cover. If we do not carry this enumeration down to date, it is simply because our space is limited and because we believe our demonstration on this point to be sufficiently complete without this additional element of proof.<sup>31</sup>

We have shown that before 1889 the Swiss Referendum was practically unknown in America and that in the course of the following decade it was very widely discussed before the American public. On the other hand we know that in 1898 it was first adopted by an American state. The mere sequence of these facts seems to imply a relation of causality. But in order to satisfy the most exacting we must show that the enactment of the American measures took place under the immediate influence of the Swiss example. And this also our evidence clearly enables us to do.

The first political party to demand direct legislation in America was the Socialist Labor Party. It had originally taken over this plank, with many others, from the platform of the German Social Democrats.<sup>32</sup> The latter had adopted it at Eisenach in 1869, the very year in which Karl Bürkli, of Zurich, had presented a resolution in its favor at the Congress of the International at Basle.<sup>33</sup> But in the last century the influence of the followers of Karl Marx was negligible in America.

The first large and well organized body that favored the adoption of the initiative and the referendum in this country was the American Federation of Labor,<sup>34</sup> which has officially championed these measures ever since 1892.<sup>35</sup> The man who did most to bring about this result was Mr. J. W. Sullivan,<sup>36</sup> an active member of the typog-

<sup>31</sup> For the latest and most complete bibliography of the subject see United States Library of Congress. *Select list of references on Initiative, Referendum, and Recall*, compiled by H. H. B. Meyer, Washington, 1911.

<sup>32</sup> Pomeroy, *Arena*, vol. XVI, p. 37.

<sup>33</sup> See *Direct Legislation by the People vs. Representative Government*, translated by E. Oswald, London, 1869.

<sup>34</sup> Addressing the Annual Convention of the A. F. of L. in New York on Dec. 12, 1895, on the subject of direct legislation, Mr. Eltweed Pomeroy, perhaps the best informed man on the history of the movement, said: "It is . . . an honor to be asked to speak on the cause you were the first to champion in this country." *American Federationist*, vol. II, p. 201.

<sup>35</sup> Pomeroy, *Arena*, vol. XVI, p. 34.

<sup>36</sup> Cf. C. B. Spahr: "Mr. Sullivan, whose little book has stirred the American trade-unions into action." *Outlook*, vol. L, p. 423. See also the *American Federationist*, vol. II, p. 202: Mr. Pomeroy here refers to Mr. Sullivan as "the father of the direct legislation movement in this country." F. Parsons writes: "The popular movement began in 1892, with the publication of Mr. Sullivan's book." *The City for the People*, Philadelphia, 1900, p. 287.

graphical union, subsequently a national lecturer of the American Federation of Labor, and in 1894 the founder of the *Direct Legislation Record*. Mr. Sullivan had twice visited Switzerland, in 1883 and 1888, to collect data relative to direct legislation. In the spring of 1889 he published a series of letters on the subject in the *New York Times*, followed in 1891<sup>37</sup> by an article in the *Chautauquan*, and in 1892 by his book on direct legislation, more than half of which is devoted to a study of Swiss institutions. The success of this small volume, teeming, as it does, with misstatements and exaggerations, but clearly and enthusiastically written, was phenomenal. By the advice of Mr. Samuel Gompers it was widely circulated in Massachusetts in 1894, and there "worked a revolution" among organized workmen.<sup>38</sup> By 1896, 18,000 copies of it had already been distributed all over the country.<sup>39</sup>

Various devices closely resembling the initiative and the referendum had, it is true, long been applied to the management of trade unions.<sup>40</sup> The Cigar Makers' International Union of America had introduced them about in 1880<sup>41</sup> and in England they seem to have been employed for nearly a century.<sup>42</sup> But it was only when those familiar with Swiss institutions had urged that similar democratic methods be adopted for the government of American states that the American Federation of Labor began actively to support the idea. We are therefore justified in saying that here the influence of the Swiss example was direct and decisive.

Two other bodies had become interested in the initiative and the referendum chiefly, it would seem, through Mr. Sullivan's agitation.

In 1891 Master Workman Powderly "recommended that the referendum be adopted in political government and shortly after such a plank was inserted in the Knights of Labor preamble."<sup>43</sup> Thence the idea seems to have gained various State Farmers' Alli-

<sup>37</sup> Not in 1889, as erroneously stated by Mr. Pomeroy, *Arena*, vol. XVI, p. 32.

<sup>38</sup> According to Mr. F. K. Foster's "Labor Leader" quoted in *American Federationist*, vol. I, p. 14.

<sup>39</sup> Pomeroy, *Arena*, vol. XVI, p. 33.

<sup>40</sup> "As early as 1891," declares Frank Parsons, "ten of the largest and national and international trade unions (with a membership close to 200,000) were using direct legislation." *Op. cit.*, p. 326.

<sup>41</sup> G. W. Perkins, President of this Union, quoted in *Senate Document No. 340*, 55th Congress, 2d Session, p. 68.

<sup>42</sup> S. & B. Webb, *Industrial Democracy*, new ed., 1902, pp. 15 *et seq.*

<sup>43</sup> E. Pomeroy, *Arena*, vol. XVI, p. 35.

ances.<sup>44</sup> On the 4th of July, 1892, the National People's Party, "the outgrowth . . . of the Farmers' Alliance and certain labor organizations of the cities,"<sup>45</sup> adopted a resolution at their first national convention at Omaha commending to "the thoughtful consideration of the people and the reform press the legislative system known as the initiative and the referendum."<sup>46</sup>

In South Dakota this party came into power in 1896. In 1897 A. E. Lee, the Populist candidate, was elected governor of the state.<sup>47</sup> The same year the legislature passed a constitutional amendment favoring the adoption of the initiative and the referendum of the Swiss pattern, and this amendment, having been submitted to a popular vote, was embodied in the fundamental law of the state in 1898.<sup>48</sup>

As we know that the leading Populists all over the country were very familiar with the Swiss model,<sup>49</sup> and as Rev. R. W. Haire, the most prominent advocate of direct legislation in South Dakota, writes that in his campaign against the omnipotence of the legislature, the Swiss example, which he heard of in 1889, "gave him the greatest courage to continue the agitation,"<sup>50</sup> we may safely conclude that here also the influence of Switzerland was direct and decisive.<sup>51</sup>

In Oregon, the first state that followed South Dakota's example, the Swiss influence is still more obvious. The story of the introduction of direct legislation there has been so ably and so entertainingly told by Mr. B. J. Hendrick that I need but refer to his article in last year's *McClure's Magazine*.<sup>52</sup> In Oregon and in South Dakota the same causes—popular discontent with a corrupt legislature,

<sup>44</sup> The National Farmers' Alliance did not officially join in the movement before 1895. See Pomeroy, *loc. cit.*, p. 36.

<sup>45</sup> J. A. Woodburn, *Political Parties and Party Problems in the United States*, New York, 1906, p. 110.

<sup>46</sup> *National Party Platforms*, compiled by J. M. H. Frederick, Akron, 1892, p. 83.

<sup>47</sup> D. Robinson, *A brief history of South Dakota*, New York, 1905, p. 208.

<sup>48</sup> "The amendment was carried through the legislature mainly by the Populists. It passed the Senate by a party vote, but in the House received the votes of all the Populists, six Republicans and two Democrats." Parsons, *op. cit.*, p. 282.

<sup>49</sup> The *Arena*, in which so many articles had been published on the subject between 1890 and 1898, was practically a Populist magazine.

<sup>50</sup> In a letter dated Aberdeen, S. D., May 6, 1912, written in reply to a query, which my friend and colleague, Dr. A. N. Holcombe, of Harvard University, was kind enough to make at my request.

<sup>51</sup> Oberholtzer, *The Referendum in America*, p. 309, speaks of "The recent amendment to the Constitution of South Dakota which introduces the Swiss Initiative and Referendum." Cf. *ibid.*, p. 385.

<sup>52</sup> July, Aug., Sept., Oct., 1911, vol. XXXVII.



Mr. Sullivan's book, similar writings, and the populist agitation—produced the same effect—the Swiss initiative and referendum. The adoption of these measures was facilitated by the presence in Clackamas county and particularly in Milwaukee, the city in which the movement originated, of a very large Swiss colony, “whose members,” says Mr. Hendrick, “brought with them many memories of popular law-making in their fatherland.”<sup>53</sup> Of the many leaders of the movement none was more active nor more successful than Mr. W. S. U'Ren, a prominent lawyer of Oregon City, who has been called the “legislative blacksmith” of Oregon.<sup>54</sup> I am indebted to his kindness for the following statement, made in reply to my inquiry regarding the influence of the Swiss example in his state: “We took our initiative and referendum from your country. I had much correspondence with Professor Borgeaud of the University of Geneva and with a friend, now deceased, whose name I cannot recall. He was one of the leaders in Zurich.”<sup>55</sup> We were also very much helped by letters from Philip Jamin and other Swiss citizens in the Direct Legislation Record. . . . Mr. Sullivan's book on Direct Legislation in Switzerland was a great moving cause in Oregon. We circulated about 1,500 copies between '92 and '95. . . . I believe I do not overstate the fact when I say Oregon is wholly indebted to Switzerland for these efficient tools of democracy.”<sup>56</sup>

If any doubts should subsist concerning the importance of the Swiss example for America the following testimony, for which I am indebted to three of the foremost advocates of the principle of direct legislation, must surely dispel them. Dr. J. R. Haynes, of Los Angeles, familiarly known as “Recall John,” writes: “In my opinion the example of Switzerland has been of great influence in the development of American institutions, especially in recent years. . . . The experience of Switzerland has exerted a strong influence through political students in disarming the prejudice of the people generally towards the acceptance of the initiative and referendum.”<sup>57</sup> Mr. B. J. Hendrick, the author of the above mentioned articles declares: “It is fair to say that there would be no modern revival of the initiative and referendum had it not been for the Swiss

<sup>53</sup> *McClure's Magazine*, vol. XXXVII, July, 1911, p. 241.

<sup>54</sup> Oberholtzer, *op. cit.*, p. 406.

<sup>55</sup> Probably the above mentioned Karl Bürkli.

<sup>56</sup> Letter dated Oregon City, April 19, 1912.

<sup>57</sup> Letter dated Los Angeles, April 13, 1912.

example."<sup>58</sup> Mr. G. H. Shibley, Director of the American Bureau of Political Research and National President of the People's Rule League of America, says: "The influence of the Swiss example on the development of democracy in the United States in this era is beyond words to express."<sup>59</sup>

There is certainly no desire on my part to over-estimate the significance of Switzerland's recent contribution to American political institutions. "The referendum," as the author of the most comprehensive work on this subject has said, "is clearly of ancient American lineage."<sup>60</sup> Under another name and in a somewhat different form, it steadily developed in the course of the nineteenth century before the Swiss example was known in this country,<sup>61</sup> and it would no doubt have further developed had the Swiss example remained unknown. However, as the same author says elsewhere, its extension to all statute law and its combination with the initiative after the Swiss pattern has brought about "one of the most important changes that has ever been made in the American form of government."<sup>62</sup>

If this change proves to be a progress, Switzerland will but have partially requited the debt it owes the United States for the example of its federal constitution.<sup>63</sup>

It has been hinted that the recall, of which we have said nothing so far, was also of Swiss origin.<sup>64</sup> As that institution was first introduced in its modern form in America in the Los Angeles charter of 1903,<sup>65</sup> and as this was accomplished almost exclusively through the personal efforts of Dr. J. R. Haynes,<sup>66</sup> and as neither that gentleman nor any of his associates was familiar with the Swiss

<sup>58</sup> Letter dated New York, April 1, 1912.

<sup>59</sup> Letter dated Washington, April 4, 1912. I cannot speak too highly of the courtesy shown me by these gentlemen, who favored my inquiries with very prompt and enlightening replies. I hereby renew the expression of my sincere gratitude for their valuable assistance in elucidating a point of contemporary history, which is of real interest to all present and future students of comparative politics.

<sup>60</sup> Oberholtzer, *op. cit.*, p. 268.

<sup>61</sup> F. A. Cleveland, *op. cit.*, pp. 177-190, 210-242; A. B. Hart, *National Ideals Historically Traced*. New York and London, 1907, pp. 88, 107.

<sup>62</sup> *Ibid.*, p. 174. In the new edition of his *American Commonwealth*, Mr. Bryce, speaking of the Western States which have adopted the Swiss form of direct legislation, says that "they have taken what may prove to be a momentous new departure." New York, 1911, vol. I, p. 479.

<sup>63</sup> See above, p. 2.

<sup>64</sup> M. A. Schaffner, *Yale Rev.*, vol. XVIII, p. 206; Oberholtzer, *op. cit.*, pp. 455, 456.

<sup>65</sup> Oberholtzer, *op. cit.*, p. 455.

<sup>66</sup> *Pacific Outlook*, vol. VII, Dec. 18, 1909, p. 2.

precedent at that time,<sup>67</sup> this supposition must be dismissed as baseless. Mr. Haynes writes me that he "received the idea of the recall from reading 'The City for the People,' by Frank Parsons,"<sup>68</sup> where only a very hasty mention of it is made with no allusion to Switzerland.<sup>69</sup> Parsons was familiar with Swiss institutions but we have no evidence that he knew of the Swiss recall and therefore no reason for assuming even an indirect influence on this point.

Having shown why the Swiss experiment in direct democracy should interest Americans, I must now attempt to satisfy the curiosity these introductory pages were intended to stimulate.

## II. DIRECT LEGISLATION IN SWITZERLAND

To what extent do the Swiss people exercise their legislative rights themselves? Why have they abandoned the purely representative form of government? What have they achieved thereby? These, I take it, are the three fundamental questions the reader expects me to answer.

### 1. *Present Status*

In order to avoid confusion and to save space, I shall begin by defining the various democratic devices now applied in Switzerland.

The popular initiative is the right of the people to propose legislative measures; the referendum, the right to refuse or accept them. According to the political area in which these rights are exercised, they are said to be federal (national), cantonal (state), or municipal (local); according to the measures they apply to, they are styled constitutional or legislative (statutory).<sup>70</sup> We will call the right by which a certain number of citizens may require the legislature to consider a given matter and submit a bill relating to it to the popular vote, the indirect initiative. The right by which they may require a bill, drafted without the intervention of the legis-

<sup>67</sup> As he assures me in a letter dated Los Angeles, May 6, 1912.

<sup>68</sup> *Ibid.*

<sup>69</sup> *Op. cit.*, p. 386.

<sup>70</sup> The plebiscite of a constitutional question was not formerly spoken of as a referendum in German Switzerland. In 1890 Hilty criticized Professor Dicey for this use of the term (*Politisches Jahrbuch der Schweizerischen Eidgenossenschaft*, 1890, p. 1066). But to-day the term *Verfassungsreferendum* is as common as the French equivalent, *référéndum constitutionnel*, which was used by a Swiss author as early as 1843. See A. E. Cherbuliez, *De la démocratie en Suisse*, 2 vols., Paris, 1843, vol. I, p. 85. In the official Swiss terminology *Volksabstimmung* and *votation populaire* are the current expressions.

lature, to be submitted to the popular vote, we will call the direct or formulative initiative. The referendum is termed compulsory, when it applies to bills which cannot become enforceable laws without having received the popular sanction; it is styled optional, when it applies to bills which are only submitted to the people when a petition of the citizens expressly and specifically requires them to be.

In Switzerland there is at present a *federal compulsory constitutional referendum*,<sup>71</sup> a *federal optional legislative referendum*,<sup>72</sup> and a *federal constitutional initiative*,<sup>73</sup> which may be exercised both indirectly and formulatively. A bill to introduce the *federal legislative initiative* has been pending before the Federal Assembly (Congress) ever since 1906, but has not yet been adopted. It has recently been reported on and will no doubt be discussed in the course of the present legislature.

In order to stand accepted any amendment of the federal constitution must be approved by a majority of the voters at a referendum and in a majority of cantons. All federal laws, and all federal resolutions (*Bundesbeschlüsse, Arrêtés législatifs*) which have a general application and which are not of an urgent nature<sup>74</sup> must be submitted to the people, if, within three months of their acceptance by the Federal Assembly, the demand is made by 30,000 voters or by eight cantons.<sup>75</sup> The federal constitution, or any part thereof, must be submitted to the people for amendment if the demand is made by 50,000 voters.

In studying the initiative and the referendum in the different cantons we must leave out of consideration Uri, Unterwalden, Glarus, and Appenzell, where legislation is still proposed and enacted by the *Landsgemeinde* or direct mass meeting of the people. In democracies where the representative system has not yet been introduced, the initiative and the referendum, which are essentially schemes devised

<sup>71</sup> Federal Constitution of 1874, art. 123.

<sup>72</sup> *Ibid.*, art. 89.

<sup>73</sup> *Ibid.*, arts. 120-122.

<sup>74</sup> The Federal Assembly decides finally whether a measure is a law or a resolution and, if a resolution, whether or not it is of a general application and of an urgent nature. The legislature may therefore theoretically withhold any bill from the judgment of the people. But, hitherto, public opinion has always been strong enough to prevent any arbitrary action in this connection. L. R. von Salis, *Schweizerisches Bundesrecht*, Berne, 1891, vol. I, pp. 398 *et seq.*

<sup>75</sup> Ex-Senator A. J. Beveridge is mistaken when he claims that in Switzerland the referendum may be applied to executive decrees. Cf. his article in *The World To-day*, vol. XXI, December, 1911

to overcome the disadvantages of that system, are naturally useless and therefore unknown.

In the nineteen other Swiss commonwealths the *cantonal compulsory constitutional referendum* everywhere prevails. In all the cantons but one (Fribourg) the *cantonal legislative referendum* has been introduced. In nine<sup>76</sup> of them it is compulsory for many important measures, especially those of a fiscal nature, and in nine<sup>77</sup> others it is optional in all cases.<sup>78</sup> The *cantonal constitutional initiative* is in force in all cantons, but in only a small minority can it be exercised formulatively.<sup>79</sup> The *cantonal legislative initiative* prevails in all but three<sup>80</sup> commonwealths.<sup>81</sup> In two cantons,<sup>82</sup> the constitution provides that in case of ambiguity, statutes may be interpreted by a popular vote.<sup>83</sup> In all the larger Swiss cities, the initiative and the referendum, the latter often compulsory in matters of public finance, have been introduced within the last thirty years.<sup>84</sup>

The popular recall of public officials is little known and less practiced in Switzerland. In some cantons the people may dismiss their elected legislators and in others remove the executive board (*Regierungsrath, Conseil d'Etat*) or certain of its members, but in the memory of the present generation these rights have never been exercised.<sup>85</sup> As for the judiciary, which is elected by the people or by the legislature, it is nowhere, in so far as I have been able to ascertain, subject to popular recall. Short terms of office; a critical and honest press; a vigilant public opinion; simple political conditions; small political areas; the possibility of direct legislation; the subordinate position of the judiciary, who have not the American power of refusing to apply the law when it seems to conflict with the spirit of the constitution: all these circumstances combined render the recall superfluous in Switzerland.

<sup>76</sup> Zurich, Berne, Schwyz, Solothurn, Baselland, Graubünden, Aargau, Thurgau, Valais.

<sup>77</sup> Lucerne, Zug, Schaffhausen, Baselstadt, St. Gall, Ticino, Vaud, Neuchatel, Geneva.

<sup>78</sup> T. Curti, *Die Resultate des Schweizerischen Referendums*, 2d ed., Berne 1911, p. 4. Mr. Curti is the foremost contemporary writer on direct legislation in Switzerland. I wish to acknowledge gratefully the assistance derived from his several works in the preparation of this article. I have often been obliged to rely solely on his authority.

<sup>79</sup> When the formulative constitutional initiative was adopted for the Fed. Govt. in 1891, it had only been tried in Zurich, Schaffhausen and Ticino. C. Borgeaud, *Etablissement et révision des constitutions*, Paris, 1893, pp. 339, 344.

<sup>80</sup> Lucerne, Fribourg, Valais.

<sup>81</sup> Curti, *op. cit.*, p. 3.

<sup>82</sup> Solothurn and St. Gall.

<sup>83</sup> Curti, *op. cit.*, p. 4.

<sup>84</sup> Curti, *op. cit.*, pp. 10-16.

<sup>85</sup> Curti, *op. cit.*, p. 8. J. Dubs, *Das öffentliche Recht der Schweizerischen Eidgenossenschaft*, 2 vols., Zurich, 1878, vol. I, pp. 78, 87.

As for the so-called "recall of judicial decisions," if I have had the good fortune to understand rightly the significance of that infelicitous catch-word, it is familiar in Switzerland under the name of the constitutional initiative and referendum.

Such, briefly stated, is the present status of direct democracy in Switzerland. Let us now consider when and how the referendum, the initiative, and the recall came to be adopted.

## 2. Causes

The compulsory constitutional referendum, by far the most important of all varieties of popular legislation, was also chronologically the first to be introduced in modern Switzerland. The constitution of 1798, although it was not itself submitted to the people, provided that all future amendments should be ratified by "primary assemblies" (*assemblées primaires*).<sup>86</sup> This constitution was a close imitation of the French fundamental law of 1795,<sup>87</sup> and all the French revolutionary constitutions were very directly influenced by American models.<sup>88</sup> It is therefore not stretching historical truth, to claim that Switzerland owes the most essential feature of modern direct democracy to America.<sup>89</sup>

The first Swiss constitution that was actually submitted to the people for ratification was that of 1802.<sup>90</sup> After the French July Revolution in 1830, a wave of democratic reform swept over Switzerland. As a result several cantons modified their form of government, and in all that did so, except Fribourg, the principle of the constitutional referendum was recognized. After 1848 no cantonal constitution was accorded the federal sanction unless it had previously been ratified by the people.<sup>91</sup>

Although a somewhat analogous institution had prevailed before in the Valais, in Graubünden, and in Geneva,<sup>92</sup> one may say that the

<sup>86</sup> Helvetic Constitution of 1798, arts. 106, 107.

<sup>87</sup> A. Aulard, *Histoire politique de la révolution française*, Paris, 1901, pp. 543-579.

<sup>88</sup> This has been conclusively shown by Professor Borgeaud in his above quoted work. Cf. *op. cit.*, pp. 27-31, 243, 284.

<sup>89</sup> This debt has been expressly recognized by T. Curti, in his *Open Letter to Mr. George J. King*, reprinted in the January, 1910, number of the Equity Series.

<sup>90</sup> T. Curti, *Geschichte der Schweizerischen Volksgesetzgebung*, 2d ed., Zurich, 1885, p. 109.

<sup>91</sup> Federal Constitution of 1848, art. 6, litt. c.

<sup>92</sup> Cherbuliez, *op. cit.*, vol. I, p. 92. K. Hilty, above quoted article in *Archiv für öffentliches Recht*, 1887, pp. 172 et seq.; P. Linder, *Die direkte Volksgesetzgebung im schweizerischen Staatsrecht*, Halle 1905, pp. 41-70. Geneva Constitution of 1794, Lois Politiques, arts. 107, 108.

modern optional legislative referendum was also a product of the democratic movement of 1830. It was first introduced in St. Gall in 1831.<sup>93</sup> Baselland adopted it in the following year, Lucerne in 1854,<sup>94</sup> Vaud in 1845,<sup>95</sup> Schwyz in 1848.<sup>96</sup> It then spread rapidly, and to-day, as before remarked, Fribourg is the only canton which has not yet accepted it.

The federal constitution of 1848 underwent a general revision in 1874 and the optional legislative referendum was then introduced.<sup>97</sup> As Professor Borgeaud says, "it entered the federal constitution as a concession to minorities and a counterpoise to the new powers which the revised articles took away from the states in order to lodge them with the union."<sup>98</sup>

The compulsory legislative referendum was introduced for all legislation in Baselland in 1863;<sup>99</sup> for the most important measures only, in Zurich, Thurgau, Berne, and Solothurn 1869 and in Aargau a year later;<sup>100</sup> for fiscal matters only, in Neuchatel in 1858, and in Vaud in 1861.<sup>101</sup> In the cantons where the compulsory legislative referendum is most developed, the measures subject to popular ratification are voted on once or twice a year at dates established by law. In Berne, for instance, all important bills adopted by the legislature in the course of the preceding year, are voted on by the people on the first Sunday in May.

The constitutional initiative, in its primitive form, was simply the right of the people to demand a general revision of the fundamental law. This right was first proclaimed in a number of the cantonal constitutions drawn up after the revolutionary movement of 1830,<sup>102</sup> and was looked upon as an extremely dangerous innovation by the conservative publicists of the day.<sup>103</sup> By 1848, however, it had been

<sup>93</sup> Curti, *Geschichte*, pp. 128 *et seq.*

<sup>94</sup> *Ibid.*, p. 126.

<sup>95</sup> *Ibid.*, p. 127.

<sup>96</sup> *Ibid.*, p. 207.

<sup>97</sup> Federal Constitution of 1874, art. 89.

<sup>98</sup> Borgeaud, "Practical results which have attended the introduction of the Referendum in Switzerland." *Arena*, vol. XXXIII, May, 1905, p. 482.

<sup>99</sup> Curti, *Geschichte*, p. 211.

<sup>100</sup> *Ibid.*, pp. 212-214.

<sup>101</sup> *Ibid.*, p. 209.

<sup>102</sup> Cherbuliez, *op. cit.*, vol. I, p. 83. The principle was already embodied in the Geneva Constitution of 1794, *Lois Politiques*, arts. 103-106.

<sup>103</sup> Cherbuliez, for instance, writes, "Je ne connais rien dans l'histoire qui ressemble à cette instabilité des institutions consacrée en principe et devenue le droit commun de treize peuples." He adds in a foot-note "Aux Etats-Unis d'Amérique les constitutions de New Hampshire, Vermont, et Indiana sont, si je ne me trompe, les seules qui n'accordent pas à la législature l'initiative exclusive des référendums constitutionnels." *Op. cit.*, vol. I, p. 85.

generally recognized to be what it undoubtedly is, a very effective safeguard against violent outbursts of popular discontent. It was therefore imposed on all cantons by the Federal Constitution,<sup>104</sup> which adopted it also for the federal state.<sup>105</sup>

That the right to demand a general revision of the constitution implied the right to demand certain specific amendments thereof seems logically evident and legally certain. But although the Federal Constituent Assembly in 1848 had in clear terms expressed this to be its opinion, the national legislature in 1879 refused to consider a petition signed by more than 50,000 voters, requesting that the people be consulted on the expediency of amending the constitution on a particular point. This somewhat autocratic attitude of the legislators aroused a widespread feeling of discontent, which, after much desultory discussion, culminated in 1891 in the adoption by the people of a very radical measure. The principle of the federal formulative constitutional initiative was then embodied in the constitution.<sup>106</sup> Any 50,000 voters have thereby acquired the right to oblige the people to vote directly on any constitutional amendment they may see fit to propose. The adoption of this measure was somewhat anomalous, as it certainly was not in the line of a normal evolution that the federal constitution, the highest law of the land, should be rendered more easily amendable than all other federal, and than most cantonal legislation.<sup>107</sup>

The cantonal legislative initiative was first introduced into Switzerland in the Vaud constitution of 1845.<sup>108</sup> The debates of the Constituent Assembly do not show whether this innovation was devised merely as an extension of the right of petition, or whether it was suggested by some radical writing of the day. It is certain, however, that the political revolution which broke out in Lausanne in 1845, was not uninfluenced by the contemporary communistic movement

<sup>104</sup> Federal Constitution of 1848, art. 6, litt. c.

<sup>105</sup> *Ibid.*, art. 113.

<sup>106</sup> Borgeaud, *Etablissement*, pp. 370 *et seq.*

<sup>107</sup> It shocked even so progressive a statesman as Numa Droz, who declared that by accepting this measure, the Swiss people had abandoned democracy for demagoguery. Numa Droz, *Etudes et portraits politiques*, Geneva, 1898, p. 453.

<sup>108</sup> Curti, *Geschichte*, pp. 148-157. The legislative initiative was not new to the world in 1845. In the Girondine constitution of 1793, Condorcet had proposed a similar device, and this may have been suggested by American Colonial examples. Aulard, *op. cit.*, p. 285, C. S. Lobingier, *The People's Law*, New York, 1909, pp. 79, 80, 155, 358. Under the Geneva Constitution of 1794, any 700 citizens could, by right of petition, oblige their representatives to submit a bill to the mass meeting of the electorate. Acte Constitutif art. 34, Lois Politiques, arts. 107, 108, 513.



of German artisans, which had its center in the canton of Vaud; and it is at least possible that the very advanced reforms then introduced are in some degree related to that movement.<sup>109</sup> The chief cause of the Vaud constitution of 1845, however, must be sought in the general political situation of the country. Everywhere the demand for a stronger federal union was accompanied by a corresponding demand for more democratic institutions. When the first popular wish was finally satisfied by the adoption of the constitution of 1848, the second was for a time forgotten. But after 1860 the popular cry for more political rights was again raised and a series of cantons introduced the legislative initiative, Aargau as early as 1852,<sup>110</sup> Baselland in 1863,<sup>111</sup> Zurich, Thurgau, and Solothurn in 1869.<sup>112</sup>

When, looking over the general political development of Switzerland in the course of the nineteenth century, we endeavor to discover the causes which led to the establishment of the initiative and of the referendum, we find that popular discontent with those in power was always and everywhere the most potent factor. In 1798, 1830 to 1833, and 1845 to 1848 the various cantonal governments had become unpopular because, the suffrage being indirect and far from universal, they rested on an aristocratic or oligarchical basis contrary to the democratic spirit of the times. In the latter half of the century the people were most often aroused by the partial, nepotic, or autocratic behavior of the men they had themselves elected to office. So in Neuchatel in 1858 the referendum in financial matters was introduced as a consequence of the government's railroad policy, which was unduly favoring one particular district.<sup>113</sup> So in Zurich in 1869 the referendum and the initiative were adopted as protests and as safeguards against the public service corporations and large moneyed interests, whose influence on the government of the commonwealth and on the administration of justice was deemed threatening to public welfare.<sup>114</sup> Many similar instances could be quoted.

<sup>109</sup> W. Marr, *Das junge Deutschland in der Schweiz*, Leipzig, 1846, pp. 287-289, 358; G. Adler, *Die Geschichte der ersten sozial-politischen Arbeiterbewegung in Deutschland*, Breslau, 1885, p. 69.

<sup>110</sup> Curti, *Gesichte*, p. 208.

<sup>111</sup> *Ibid.*, p. 211.

<sup>112</sup> *Ibid.*, pp. 212-213.

<sup>113</sup> *Ibid.*, p. 209.

<sup>114</sup> *Ibid.*, pp. 215-238. No evidence has ever been produced in support of the charge of corruption which certain all too enthusiastic American advocates of direct legislation seem inclined to make against the government of Zurich before 1869. This government, headed by the able, honest, but autocratic Alfred Escher, distinctly represented the wealthy classes of the community. It was out of touch with the people and its prestige suffered severely during the "hard times" which prevailed in Zurich before 1870. See Dubs, *Die Schweizerische Demokratie in ihrer Fortentwicklung*, Zurich, 1868, pp. 72 *et seq.* Burkli, *Direct Legislation by the People*, London, 1869, pp. 1-16.

As the initiative and the referendum were the product of discontent, it is natural that they should usually have been advocated by minority parties or by individual insurgents. Such has generally been the case and one can say that the general staff of the radical liberal party, which has been in power for over fifty years, has on the whole been opposed to the further extension of popular rights. Except in the cantons where the majority was conservative, most radical liberal leaders have either fought the initiative and the referendum or accepted them reluctantly as necessary concessions to public opinion.<sup>115</sup>

It is interesting also to note the constant relation existing between the movement in favor of direct popular legislation and that in favor of radical social and economic reform. Druey and Delarageaz, two of the leaders in the Vaud revolution of 1845, had been in close touch with the German communists Weitling and Marr.<sup>116</sup> Treichler, who perhaps contributed more than any other writer to the introduction of the direct popular vote in the cantons of Eastern and Northern Switzerland after 1848, demanded labor legislation, public workshops, and gratuitous credit for the working classes, as well as the legislative referendum and recall, in his manifesto entitled "Political Principles."<sup>117</sup> Karl Bürkli, one of the most zealous promoters of direct democracy in Zurich in 1869, was a disciple of Fourier and later a member of the International.<sup>118</sup> Even to-day, after several disappointing experiences, the initiative and the referendum have no more ardent defenders in Switzerland than the socialists.

The historic origin of the Swiss recall is uncertain. This institution may be connected with the *grabeau*, the mode of censure of public officials practiced in Geneva until the end of the eighteenth century,<sup>119</sup> and extended by Bonaparte, in a somewhat altered form, to Basle, Zurich, Schaffhausen, Berne, Lucerne, Fribourg, and Solothurn in 1802,<sup>120</sup> or it may be considered as an imitation of the

<sup>115</sup> Dubs, *op. cit.*, p. 76. K. Hilty, *Theoretiker und Idealisten der Demokratie*, Berne, 1868, p. 27. S. Deploige, *Le référendum en Suisse*, Brussels, 1892, pp. 168-172. Borgeaud, *Etablissement*, p. 375.

<sup>116</sup> Cf. note 109 above.

<sup>117</sup> Adler, *op. cit.*, p. 71.

<sup>118</sup> Curti, *Geschichte*, etc., p. 216.

<sup>119</sup> Leonard Meister, *Abriss des Eydgenössischen Staatsrechts*, St. Gall, 1786, p. 342.

<sup>120</sup> See in *Acte de Médiation fait par le Premier Consul de la République française*, 2d ed., Lausanne, 1807, the constitutions of the above mentioned cantons.

French revolutionary *révocation*, which certain electoral bodies demanded in 1792;<sup>121</sup> or it may have sprung from a spontaneous desire for popular democratic control. The slight practical importance of the recall in Switzerland would not justify a critical investigation of this question here.

### 3. Results

It is logically impossible to make any scientific statement with regard to the positive results of direct democracy in Switzerland.

We are tolerably well informed as to the political conditions prevailing before the introduction of the initiative and referendum, we know when and why these devices were adopted, and what uses they have been put to; but, as there is no way of ascertaining what would have happened if a purely representative form of government had been retained, our final judgment as to their merits cannot rest solely on their apparent results, but must always be somewhat influenced by the personal bias with which we approach the problem. It is easy enough to declare, as many eager propagandists have done, that, as Switzerland was a "boss-ridden" country seventy-five years ago and is now an ideal commonwealth, direct legislation, which was introduced in the interval, must be a panacea. That may be effective as campaign evidence; it is most unconvincing as an argument, since, even if we granted the premises, which are both grossly exaggerated, to say the least, the conclusion would by no means follow. As I have no ambitions beyond those of a student, I shall be content, before concluding, to give a few statistical notes on the actual working of the initiative and referendum in the federal government and in two of the largest cantons, and to mention the principal legislative tendencies displayed by direct democracy in Switzerland in the course of the last half century.

From 1874 till 1908 the Federal Assembly passed 261 bills and resolutions which could constitutionally be subjected to the referendum. Thirty of these 261 were actually voted on by the people, who ratified eleven and rejected nineteen of them. The effect of the federal optional legislative referendum was then to hold up a little more than seven per cent of the statutory output of the Federal Assembly. During the same period seventeen constitutional amendments were proposed, twelve of which were accepted, and five, that is twenty-nine

<sup>121</sup> Aulard, *op. cit.*, p. 258.

per cent, of which were thrown out by the compulsory constitutional referendum. Since 1891 down to the present time, the initiative has been used eight times in endeavors to amend the federal constitution, six of these attempts have failed, three have succeeded.<sup>122</sup>

From 1831 to 1910 the St. Gall legislature passed 395 bills. Thirty-six of these were submitted to the optional referendum and in thirty-one cases out of thirty-six the referred measure was defeated. A little over seven per cent of the measures proposed by the legislature in the course of eighty years were defeated by the popular vote. The constitutional initiative was tried three times in St. Gall since its introduction in 1891, but has always failed.<sup>123</sup>

In the cantons where the legislative referendum is compulsory, it naturally acts as a more effective but less discriminating check on the legislature. In Berne, for instance, out of the 146 bills submitted to the popular vote during the forty-year period extending from 1869 to 1909, 35 were rejected, and 111 were ratified. During the same time the popular initiative was resorted to on nine different occasions, but succeeded only four times.<sup>124</sup>

Quantitatively speaking, it can hardly be said that the Swiss people have abused their right and have unduly interfered with the activity of the legislature. No doubt one hears complaints now and then about the excessive frequency of popular votes,<sup>125</sup> but on examining the matter closely one finds that these protests usually spring from a feeling of dissatisfaction with the popular verdict, rather than with the institution of the popular jury which rendered it. A beaten team is naturally inclined to find fault with the rules of the game. What evil there may be with respect to a too frequent recurrence of plebiscites carries its remedy with it, as no group of individuals and no party is apt to risk its popularity by obliging the voter to go to the polls when he has already been wearied by too often repeated appeals to his civic conscience.

The quantitative use made of the popular vote in Switzerland has, on the whole, been conservative. Can the same be claimed for its qualitative effects?

<sup>122</sup> Curti, *Resultate*, p. 36.

<sup>123</sup> *Ibid.*, p. 29.

<sup>124</sup> *Ibid.*, p. 26.

<sup>125</sup> About sixty per cent of the registered voters usually take part in the federal referendum. This fraction has fallen as low as 40 per cent in non-contested issues and risen as high as 77.6 per cent in the hotly fought battle over state ownership of railroads in 1898. It has not decreased in the last fifty years and is not lower in those cantons where local elections are most frequent than in others. *Ibid.*, pp. 68, 69.

In order to answer this question we must naturally distinguish between the initiative, which is essentially a positive institution, and the referendum, which, like the American executive veto, with which it has often been compared in Switzerland,<sup>126</sup> is essentially negative in its consequences. Curti has aptly compared the referendum to a shield for warding off undesirable legislation and the initiative to a sword which enables the people to "cut the way for the enactment of their own ideas into law."<sup>127</sup>

The initiative has most often been used in Switzerland as a tool to undermine the position of the party in power. Thus the introduction of proportional representation, a system whose chief practical object is to strengthen minority parties, has usually been attempted by means of the initiative.<sup>128</sup> In several cantons it has succeeded, in the federal government, however, it has been twice defeated.<sup>129</sup> An initiative to introduce the election of the federal executive by the people has similarly been voted down.<sup>130</sup>

The initiative has furthermore been resorted to in certain specific instances where the emotions of the people were more deeply aroused than those of their representatives. Such has quite frequently been the case in criminal matters. The national prohibition of the strong spirituous liquor called absinth was brought about by an initiative, launched under the immediate influence of a sensational murder committed by a drunkard on several members of his family.<sup>131</sup> The initiative has similarly been used with varied success in attempts to suppress public houses of prostitution,<sup>132</sup> to prohibit vivisection,<sup>133</sup> to reintroduce capital punishment,<sup>134</sup> and to reinforce penal law with respect to strike violences.<sup>135</sup>

A third class of measures in favor of which the initiative has been

<sup>126</sup> For instance, in the Constitutional Debates in Zurich in 1842. Cf Curti, *Geschichte*, p. 144.

<sup>127</sup> Curti, *Open Letter*, etc. It is amusing in this connection to note the imaginative efforts of the authors who have discussed the referendum. Professor Dicey, for instance, compares it to "a check;" Ambassador Bryce to a "bit and bridle;" Professor Commons to a "club of Hercules;" Lord Curzon to a "broom" and Professor Oechsli refutes those, who would see in the institution "a grave of all progress" and a "drag"!

<sup>128</sup> Curti, *Resultate*, pp. 12, 27, 31, 32.

<sup>129</sup> By 244,570 nays against 169,018 yeas in 1900 and by 265,194 nays against 240,305 yeas in 1910. *Ibid.*, pp. 58, 59, 64.

<sup>130</sup> By 270,502 nays against 145,936 yeas in 1900. *Ibid.*, p. 59.

<sup>131</sup> The initiators had collected the unusual number of 167,814 signatures and carried their point with the people on July 5, 1908, by 241,078 nays against 138,660. *Ibid.*, p. 62.

<sup>132</sup> Succeeded in Zurich, but failed in Geneva. *Ibid.*, 24, 32.

<sup>133</sup> Partially succeeded in Zurich in 1895. *Ibid.*, p. 23.

<sup>134</sup> Succeeded in Zurich in 1883, but again repealed soon after. *Ibid.*, p. 23.

<sup>135</sup> Partially succeeded in Zurich. *Ibid.*, p. 24.

resorted to, are of an eccentric, and often of an extremely demagogic nature. Such are, for example, the "right-to-work clause," which the socialists sought to introduce into the Federal Constitution in 1894,<sup>136</sup> and the onslaught on the federal finances, which was attempted in the same year by a group of citizens who demanded that the federal government should hand over to the cantons a sum of two francs per head of the population out of the receipts of the customs.<sup>137</sup> Both these proposals were voted down by tremendous majorities.<sup>138</sup> The initiators had been encouraged by the success of a less perilous, if not less peculiar measure which had been adopted in 1893. By the popular initiative a constitutional amendment prohibiting the butchering of cattle according to the Hebrew rite, had in that year been added to the fundamental law of the country. This strange and illiberal measure, which had been carried, amidst the indifference of the public at large, thanks to the combined efforts of Jew-haters (*antisémites*) and of societies for the prevention of cruelty to animals, was the first product of the federal constitutional initiative.<sup>139</sup>

The only constructive measure of importance, which Switzerland owes to this institution, is an amendment to the constitution by which the federal government in 1908 acquired the right to legislate on the subject of hydraulic resources when any national interest was at stake.<sup>140</sup> This right had before been vested in the individual cantons, and the Federal Assembly, whose members are often members also of the cantonal executive boards or legislative bodies, had not seen fit to take the first steps towards depriving them of it.

The actual worth of the initiative cannot be exactly estimated, as it has a potential as well as a direct influence. Besides its positive results in Switzerland, which have fully justified neither the hopes of its friends nor the alarms of its enemies, it may have acted on the spirit of the legislators as an animating and salutary threat. In how far this has been the case, we can but surmise, but it seems probable

<sup>136</sup> Cf. Borgeaud, "Le plébiscite du 4 Novembre, 1894," *Revue du Droit Public*, 1894, p. 536. Droz, *op. cit.*, p. 474.

<sup>137</sup> *Ibid.*, pp. 537-539.

<sup>138</sup> 308,289 yeas against 75,880 nays in the first case, 347,401 yeas against 145,362 nays in the second.

<sup>139</sup> Droz, *op. cit.*, p. 473. Borgeaud, *Le plébiscite*, p. 535; Curti, *Resultate*, etc., p. 51. The measure was carried by 191,527 yeas against 127,101 nays, the number of registered voters being upwards of 660,000.

<sup>140</sup> Curti, *Resultate*, p. 63, 304,923 yeas against 56,237 nays.

that the competition it establishes between the "ins" and "outs" of politics has had a stimulating effect on the former. We cannot, therefore, entirely agree with Mr. Frankenthal when he suggests, at the conclusion of his report to the Department of State, that an "ounce of American primary and representative prevention" may be worth a "pound of Swiss initiative cure."<sup>141</sup> The initiative is not solely a cure; it is an incentive to good, active legislation and is therefore a preventive of sloth and corruption.

The referendum, we have said, is essentially negative in its effects. It gives the community a chance to refuse legislative gifts. It cannot add to its institutional wealth.

Without examining the hundreds of cases in which the Swiss referendum has shown that the views of the people do not always coincide with those of their elected representatives, I will mention three great popular tendencies which it has revealed.

The first is a dislike for bureaucracy. Whenever a bill tends to increase the influence of political officials it is sure to encounter a strong opposition at the polls. Many measures, such as the Federal Pension bill of 1891,<sup>142</sup> or the Federal Banking bill of 1897,<sup>143</sup> have been rejected for just this reason, and many others which proved acceptable to the majority on other grounds, have been bitterly opposed by strong minorities on account of their bureaucratic tendencies and consequences.

Bills have also often been defeated in a referendum simply because the country was generally dissatisfied with its representatives and rulers. "Those people in Berne need a lesson," such has repeatedly been the somewhat irrational but very human argument of the average Swiss citizen, voting against some unimportant and by no means objectionable measure. This was particularly noticeable in 1884 when the referendum was demanded by nearly 100,000 voters on four federal bills at once, none of which was clearly unreasonable, but all of which were vetoed by large majorities.<sup>144</sup>

<sup>141</sup> Report to the Department of State by the American vice-consul at Berne, Switzerland, concerning "The practical workings of the Popular Initiative in Switzerland." 61st Congress. *Senate Document, No. 126*, Washington, 1909, p. 32.

<sup>142</sup> Defeated by 353,977 nays against 91,851 yeas. Curti, *Resultate*, p. 48.

<sup>143</sup> Defeated by 255,984 nays against 195,765 yeas. *Ibid.*, p. 54.

<sup>144</sup> This referendum was popularly styled the "four-humped camel." One of the humps was a bill to grant the Swiss embassy at Washington an additional yearly credit of \$2,000. Over 200,000 citizens thought it worth their while to vote against this act of extravagance, which they suspected to be prompted by motives of personal favoritism. *Ibid.*, pp. 45-47.

The referendum has furthermore worked against what one might call ideological legislation. Measures such as the "right-to-work" bill above referred to, which are grounded solely or mainly on abstract conceptions of justice, are almost certain to be defeated. The popular vote has time and again shown that the people are interested in the immediate practical benefits to be derived from a law, much more than in the intrinsic excellence of its basic principle. It follows that a defeated bill may very well be taken up again by its authors, modified in some of its minor details and submitted shortly after to a new judgment with every chance of success. Such was the case in Zurich when, in 1899, the people refused to contribute to the building of an art museum and reversed their decision seven years later.<sup>145</sup> Similarly the Swiss people vetoed a bill to introduce government ownership of railroads in 1891 and accepted an analogous measure in 1898.<sup>146</sup> In 1900 the people, by majority of nearly 200,000 nays, repudiated a Workmen's Compulsory Insurance bill that had been carried in both houses with only one dissenting vote.<sup>147</sup> A somewhat more liberal bill on the same subject was passed by the Federal Assembly in the spring of 1911 and ratified on February 4th of the present year by 286,630 yeas against 238,729 nays.

The third tendency shown by the referendum is a strong dislike for extravagance or, better said, for its necessary consequence. The people are by no means averse to fine public buildings and cheap government service, but when it comes to footing the bill they are very apt to object. This has been the case in the cantons and in the larger municipalities, where property and income taxes prevail, more than in the federal government, which relies on indirect taxation for its expenditures. The unfavorable financial situation of several commonwealths and cities is to be ascribed, in no small degree, to the referendum or rather to the inconsistent use made of it. Expenditures are tacitly approved, light, water rates and the like are lowered, but all attempts at a corresponding increase of taxes, especially on small and moderate incomes, are ruthlessly voted down.<sup>148</sup> The result too often is a steady aggravation of public indebtedness, as in

<sup>145</sup> Curti, *Resultate*, p. 14.

<sup>146</sup> *Ibid.*, pp. 48, 49, 56, 57. In the first vote there were 289,406 yeas and 130,729 nays and in the second 386,634 yeas and 182,718 nays. The proposed price of the purchase, which was considered exorbitant in the first case, was the main reason for the negative verdict in 1891.

<sup>147</sup> *Ibid.*, p. 57.

<sup>148</sup> Cf. *Ibid.*, pp. 12, 13, 14, 21, 26, 30. Almost every month the daily press in Switzerland records some incident of this kind.



Basle and Geneva, or an unduly high rate of taxation on large fortunes, with fiscal evasion as a logical consequence, as in Zurich and St. Gall.

### III. CONCLUSIONS

I will not in conclusion take up one after another all the standard arguments for and against popular votes and discuss them academically as has so often been done. I will say, however, that, viewed in the light of Swiss experience, the apprehensions of those who predict that the initiative and referendum lead to social revolution are as unfounded as are the fears of those who expect these institutions to work against all cultural progress.<sup>149</sup> In Switzerland their result has simply been a legislation eminently characteristic of the national temperament. The Swiss have therein shown themselves as they are: a well-schooled, practical, unimaginative, thrifty, and enterprising people, averse to high-flown political speculation, but awake to the possibilities of careful progress; jealous of their local autonomy but not stubbornly loath to sacrifice it on the altar of national unity when the general interest clearly demands a sacrifice; suspicious of all superiority and hostile to all social and economic privileges, but still more suspicious of and hostile to all policies which tend to destroy the privileges of superior wealth and ability by encroaching too boldly on the personal liberty of all; impatient of arbitrary rule, but willing to submit to authority when imposed by the will of the majority, and especially when backed by historical tradition; unsentimentally sympathetic to deserving poverty, but almost harshly unfeeling towards thriftless indolence.

The initiative and the referendum have sometimes been accused of making party government impossible. This criticism, which would perhaps more justly apply to proportional representation, another novel electoral scheme which is making rapid progress in Switzerland, is not borne out by Swiss experience. All that can be said is that popular votes have somewhat strengthened the influence and self-confidence of minority parties.

<sup>149</sup> Such pessimists have not been wanting in Switzerland. Answering the popular "safety-valve" or "blood-letting" argument invoked in favor of direct legislation, Cherbuliez in 1843 expressed himself very deprecatingly on the subject of "those anticipating remedies which occasion the very evils they are meant to prevent," by "inoculating the masses with the virus of revolution." *Op. cit.*, vol. I, p. 89. Bluntschli was also very skeptical. Cf. his views in his *Geschichte des schweizerischen Bundesrechts*, 2 vols., 2d ed., Stuttgart, 1875, vol. II, p. 543.

It has also been claimed that they tend to weaken the elected legislators' sense of public responsibility by transferring the right of final decision on important measures to the people at large.<sup>150</sup> Where the referendum is compulsory this may be true. Where it is optional, however, I feel inclined to attribute the lowering of political standards, which seems to have taken place in Switzerland in the course of the last generation, to other causes and especially to the anonymous, impersonal committee form of procedure which prevails in all Swiss legislatures. All law-makers are afraid of a popular veto and this may tend to make them, not reckless or careless, but on the contrary unenterprising and over-timid. Against this very real danger the initiative seems to be the best safeguard.

Among the many stock arguments in favor of direct popular legislation, I will mention but one, which Swiss experience has undoubtedly shown to be sound, and that is the educational argument.

All political institutions that are democratic make for public enlightenment. Under the representative system, however, discussions on public policy too often degenerate into disputes on personal merits. One votes for or against individuals rather than for or against ideas, and the successful candidate is very apt to be the popular orator, whose genial appearance, winning ways, and very often unscrupulous, demagogical methods, please the people by flattering their prejudices and their passions. In the referendum, on the other hand, objective argument counts for much more. And every one will agree that it is morally as well as intellectually better to vote at the dictate of one's reason, rather than on the impulse of one's instinct.

It has time and again been shown in Switzerland that a politician who has once gained the people's good will can repeatedly favor measures to which his electors object, without in the least thereby injuring his popularity. A humorist, quoted by Professor Borgeaud<sup>151</sup> once remarked, "The Swiss are a singular people; they disown their representatives and then they re-elect them." This illustrates what is perhaps less a singularity of the Swiss, than an inconsistency

<sup>150</sup> Dubs, *op. cit.*, p. 20; Droz, *op. cit.*, p. 464; A. B. Hart, *Actual Government*, New York, 1906, pp. 79, 81. It is characteristic that this argument seems to have most strongly appealed to British statesmen. See the English periodical literature quoted above, *passim.*, and Sir J. MacDonald, C. B., "The Referendum vs. Representative government," *Cont. Rev.*, March, 1911, p. 307.

<sup>151</sup> In an article published in the *Revue de Droit Public*, 1896, p. 528.

common to the whole human race. Who, in the arena of politics as well as in the realm of romance, does not sometimes disown the choice of his natural sympathy when he is reasonable? And who does not ratify that choice when he is passionate? And is any one ever quite reasonable and quite dispassionate in matters of personal preference?

To my mind the greatest advantage of the optional referendum lies in the fact that, on some momentous occasions in the life of a nation, it gives reason a hearing amidst the din and confusion of current politics.

It has not been my object in this article to defend a cause, but to present the results of a practical experiment, and this I have sought to do as impartially and concisely as possible. No community in Switzerland, having once exercised the rights of initiative and referendum, has ever abandoned them,<sup>152</sup> and to-day nobody in Switzerland seriously considers the possibility of a return to the unmitigated representative system.<sup>153</sup> It by no means follows that these rights are absolutely just nor always and everywhere beneficial. Still the practically unanimous endorsement of direct legislation by the nation most familiar with its working, is a presumption in its favor which no careful student of the subject can wilfully overlook.

The controversy in Switzerland no longer bears on the principle of the initiative and referendum, but on their form. Shall the initiative be direct or indirect? Shall the referendum be optional or compulsory? On these points opinions vary. I can do little more than briefly mention their divergencies here.

It is, I believe, generally admitted to-day that, although in some extreme cases the formulative initiative may be the only means of beating down the opposition of a stubborn legislature, it is an unwieldy weapon at best. Under ordinary circumstances, when the people's will can be made sufficiently clear without being expressed in a drafted bill, it is far more expedient to entrust the elected representatives with the task of framing a measure, before submitting it to the popular vote.

In discussing compulsory vs. optional referendum the Swiss example is commonly alluded to as showing the superiority of the

<sup>152</sup> In only two cases has direct legislation been restricted. Berne in 1880 and Zurich in 1899 somewhat limited the scope of their compulsory referendum. Curti, *Resultate*, p. 4.

<sup>153</sup> On this point ex-Senator Beveridge is certainly right. See his above quoted article in *The World To-day*, vol. XXI, Dec., 1911, p. 1472.

former over the latter.<sup>154</sup> Several prominent Swiss publicists have, it is true, written against the optional plebiscite,<sup>155</sup> but I can see nothing in the Swiss experience that justifies their views on this point. The principal argument in favor of the compulsory referendum is that it avoids the "agitation" inherent in the optional mode. Agitation, however, is but the inevitable concomitant of public discussion, and every one must admit that, in a democracy at least, discussion with agitation is certainly better than no discussion at all. As I see it, the great advantage of the optional referendum is that it tends to concentrate attention on the principal policies of the legislature. And it is obvious that the electorate will vote more discriminatingly on a few important bills than on the whole output of a legislative session. In the United States, where the elected law-makers seem particularly generous in the annual number of statutory gifts they bestow upon their constituents, the disadvantages of the compulsory referendum should be still greater than in Switzerland. If, notwithstanding these circumstances, it is generally adopted and is not intended to be wholly ineffective as means of intelligent criticism, its application should be constitutionally restricted to certain important measures.<sup>156</sup>

In the United States, as elsewhere, the introduction of direct legislation is apt to encounter a two-fold opposition.

Its first enemies are the intellectual aristocrats of the Hamiltonian temperament, who believe in "government by gentlemen,"<sup>157</sup> who with Taine hold that "a nation may perhaps say which form of government it likes, but cannot say which it needs,"<sup>158</sup> and who declare with Earl Grey that "the proper object of a government, and especially of a representative legislature, is not to meet the wishes of a majority of the population, but to adopt such measures as may be best calculated to promote their welfare."<sup>159</sup> Men of this type naturally and consistently deprecate the referendum as an "appeal from knowledge to ignorance."<sup>160</sup> I should be the last to deride

<sup>154</sup> J. W. Sullivan, *Direct Legislation*, p. 17; A. L. Lowell, *Atlantic Monthly*, vol. LXXIII, April, 1894, p. 517; A. V. Dicey, *Cont. Rev.*, vol. LVII, April, 1890, p. 496.

<sup>155</sup> See particularly Hilty, above mentioned article in *Archiv für öffentliches Recht*, 1887, p. 405.

<sup>156</sup> This is admitted even by its warmest friends. See for instance Hilty, *loc. cit.*, p. 405, and Curti, *Resolute*, p. 70.

<sup>157</sup> Lecky, *op. cit.*, p. lxii.

<sup>158</sup> See the preface to the *Origines de la France contemporaine*.

<sup>159</sup> *National Rev.*, vol. XXIII, March, 1894, p. 78.

<sup>160</sup> *Edin. Rev.*, vol. CLXXI, Jan., 1890, p. 139.

them for it, as demagogues are in the habit of doing before popular audiences. But I ask: can their philosophy long survive the adoption of universal suffrage and the general recognition of the fact that, as Karl Bürkli bluntly put it in 1869, "interest is the determining cause in matters of legislation."<sup>161</sup> The masses are not composed of "gentlemen," and gentlemen's interests very often conflict with those of the masses. For the average voter, the best representative is no longer the most intelligent nor even the most honest, but he who most faithfully, because most selfishly, represents the local or class interest of his constituents. This very much limits the opportunity of "gentlemen" in politics. When it will have become evident that representative government can no longer be a gentleman's game, then the upper privileged few in the community, whose interests are often those of culture and of higher civilization, may not find it inexpedient to favor the initiative and especially the referendum. They have done so in Switzerland. Is there any reason why they should do otherwise in the United States?

The other class of opponents of direct legislation profess to believe in government by the people, but have some misgivings about the practical results of applied democracy. They are not averse to allowing the masses to choose their representatives freely, but they rely, for their own personal security, on the discrepancies which may arise between the acts of the majority of the elected and the desires of the majority of the electors. To state their position in these terms is to show its inconsistency; and I do not think that I have stated it unfairly.

In theory, therefore, the further extension of popular control by means of direct legislation seems inevitable in all countries where universal suffrage prevails. In practice Swiss experience may perhaps disappoint those of its American friends who expect it to accomplish sudden constructive reforms; but it should certainly reassure those of its foes who fear its destructive revolutionary effects.

At this conjuncture of American history, when public safety and intelligent progress are alike threatened by Syndicalism,—admittedly the movement of a "conscious, militant minority,"—it would seem that direct legislation, which cannot but assure the rule of the majority, should receive the support both of conservatives, in the interest of safety, and of radicals, in the interest of progress.

<sup>161</sup> See *Senate Document No. 340*, 55th Congress, 2d Session, Washington, 1898, p. 31.